Supreme Court, U.S.
FILED
JUL 28 1994
OFFICE OF THE CLERK

94-80
No.

In The

Supreme Court of the United States

October Term, 1994

TAWANA WILSON, personal representative of the Estate of Jesse Wilson, deceased,

Petitioner,

vs.

MUNICIPALITY OF ANCHORAGE; ANCHORAGE FIRE DEPARTMENT; INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1264; JERMAIN, DUNNAGAN and OWENS, P.C.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

A. Whether or not the U.S. Supreme Court should deny the Petition for Writ of Certiorari?

B. Whether the Court of Appeals for the Ninth Circuit correctly affirmed the U.S. District Court's decision to grant the Municipality of Anchorage's and the Anchorage Fire Department's Motion for Summary Judgment on the grounds that petitioner's decedent, Jesse Wilson, did not and could not establish a prima facie case of conspiracy to deprive him of equal protection under the laws under 42 U.S.C. § 1983?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

FORMAL DESCRIPTION OF OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 1

CONSTITUTIONAL PROVISION STATUTES, ORDINANCE AND REGULATIONS 2

CONCISE STATEMENT OF THE FACTS 4

ARGUMENT 8

A. REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI 8

1. The court did not depart from the accepted and usual course of judicial proceedings 8

2. The court's decision is not in conflict with applicable Supreme Court or another decision of a Court of Appeals 9

a. Class based animus or discriminatory intent .. 9

b. Fundamental rights 10

c. The Court of Appeals for the Ninth Circuit did not require a higher burden of proof to defeat a Motion for Summary Judgment than the United States Supreme Court 11

d. The court's decision is not in conflict with another decision of a Court of Appeals on the determination of what questions are in the province of the jury 11

3. There are not any important federal law questions presented that haven't already been decided by this court 12

4. Attorney's fees issues 12

B. THE COURT OF APPEALS FOR THE NINTH CIRCUIT CORRECTLY AFFIRMED THE DECISION OF THE UNITED STATES DISTRICT COURT, DISTRICT FOR ALASKA 13

CONCLUSION 15

TABLE OF AUTHORITIES

Cases Cited: Page

Adickes v. S.H. Kress and Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970) 11

Coverdell v. Department of Social and Health Services, 834 F.2d 758 (9th Cir. 1987) 11

Dixon v. City of Lawton, Oklahoma, 898 F.2d 1443 (10th Cir. 1990) 12

Dooley v. Reiss, 736 F.2d 1392 (9th Cir. 1984) 12

General Building Contractors Association v. Pennsylvania, 458 U.S. 375, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982) 10

Griggs v. Duke Power Company, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1975) 10

Hampton v. Hanrahan, 600 F.2d 600 (7th Cir. 1979) 11,12

Massachusetts Board of Retirement, et al. v. Murgia, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) 10

McDonald v. City of West Branch, Michigan, 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed. 2d 302, (1984) 8

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) 9

Meiri v. Dacon, 759 F.2d 989, 998 (2nd Cir. 1985) 11

Mescall, et al. v. Burrus, et al., 603 F.2d 1266 (7th Cir. 1979) 10,11

Milgard Tempering, Inc. v. Selas Corp. of America, 902 F.2d 703 (9th Cir. 1990) 9

Personnel Administrator of Massachusetts, et al. v. Fenney, 442 U.S. 256, 99 S.Ct. 2282, 60 L.Ed. 2d 870 (1979) 10

U.S., et al. v. Washington, et al., 774 F.2d 1470 (9th Cir. 1985) 9

Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed. 2d 597 (1976) 9

Constitutional Provisions

United States Constitution

Amendment XIV, Section 1 2

United States Code

28 U.S.C. § 1254 1

28 U.S.C. § 1291 7

28 U.S.C. § 1442 6

42 U.S.C. § 1981 9,10

42 U.S.C. § 1983 . . . . . 1,2,6,7,8, 9,10,11,12,15

42 U.S.C. § 2000e *et seq.* (Title VII) 9,10

Supreme Court Rules

Supreme Court Rule 10.1 8,13,15

Supreme Court Rule 15.1 13

Alaska Statutes

AS 18.80.210 6,7

AS 18.80.220 6,7

Anchorage Municipal Code

AMC 3.30.052(B) (Personnel Rule 5.2(b)) 2,4

Other Authorities

Labor Contract Agreement Between Municipality of Anchorage and International Association of Firefighters § 10.1.3 3,4

FORMAL DESCRIPTION OF OPINIONS BELOW

A formal description of opinions below has been provided in the Statement of the Case.

JURISDICTIONAL STATEMENT

The Petitioner is petitioning the court to review the Court of Appeals for the Ninth Circuit's decision dated February 11, 1994. The Court of Appeals for the Ninth Circuit denied the Petition for Rehearing on April 4, 1994. The U.S. Supreme Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS RELIED UPON

United States Constitution

Article XIV.

§ 1. Citizenship rights not to be abridged by states. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code

42 U.S.C.S. § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Anchorage Municipal Code

3.30.052 Types of Eligible Lists

(B) Rehire List (Personnel Rule 5.2(b))

An employee who separated in good standing may have his name placed on a rehire list for the same class of position, or a lower class in the same or a parallel series

with the advance approval of the director, provided he so requests in writing within one year from date of separation. Names of employees eligible for rehire shall be certified as additional, unranked eligibles on promotional and open-competitive eligible lists. Eligibility to remain on the rehire list expires one year from date of separation.

Labor Contract Agreement
Between Municipality of Anchorage and
International Association of Firefighters

Article 10 REHIRING PROCEDURE

10.1.3 Any former employee of the various job classifications covered by the agreement or any preceding agreements, who terminated due to non-occupational injury or illness will be granted preferential reemployment rights after occupational injury applicants and employees. Such reemployment rights shall be conditioned on medical certification of the person's physical or mental ability to perform the job for which they are applying and their passing entry physical ability test as required by the job description. Such preferential reemployment rights shall be predicted on the existence of an open position, regardless of vacancy factor.

CONCISE STATEMENT OF THE CASE

Jesse Wilson, Petitioner's decedent, (hereinafter Wilson) joined the Anchorage Fire Department for the Municipality of Anchorage in 1974. On July 7, 1989, Wilson advised Fire Chief Langston of his desire to terminate his employment with the Anchorage Fire Department because of his hypertension. CR 44, Exhibit D. Chief Langston did not make any assurances that Wilson could return as a Fire Inspector, which was the position Wilson held at the time of his resignation. On August 7, 1989, the Police and Fire Retirement Board, which has the authority to determine non-occupational or occupational disabilities, denied Wilson's request for a permanent non-occupational disability for hypertension since the evidence he submitted did not show that he was unable to work as a Fire Inspector, or was disabled by the hypertension. CR 44, Exhibit F.

In November 1989, Wilson sought to return to the Anchorage Fire Department and contacted Chief Langston. On November 13, 1989, Tim Cornelius, President, International Association of Firefighters, Local 1264, Chief Larry Langston, and Neil Koeniger, Personnel Director, entered into a written agreement that Wilson could return to employment as a Firefighter III, and would have to compete for a Fire Inspector position after rehire. CR 44, Exhibit J. This meeting took place to ensure the benefits of and compliance with § 10.1.3 of the collective bargaining agreement.

Section 10.1.3 of the collective bargaining agreement governs the rehire procedures for individuals who terminated their employment because of a non-occupational illness or injury. It provides that a former employee will be granted preferential reemployment rights. Section 10.1.3 does not provide that Wilson could return as a Fire Inspector within two (2) years, nor does Personnel Rule 5.2(b) provide that Wilson has the right to return to his former job within one year. Personnel Rule 5.2(b) provides that one's name will be placed on an eligibility list, but it does not guarantee rehire.

In February of 1990, Wilson requested to be rehired in accordance with the provisions of the November 13, 1989 letter.

CR 44, Exhibit K. In a letter dated February 22, 1990, Langston told Wilson that in accordance with the November 13, 1989 letter, Wilson needed to provide a medical release stating that he was now able to work as a Firefighter without reservations of any kind, and that he would need to take and pass the firefighter physical ability test prior to being accepted. Once these steps were completed, then he would be hired as a Firefighter III with departmental seniority and date of rank as of the date of rehire. CR 44, Exhibit M.

During March and April, Wilson was permitted to take the Standard Physical Abilities Screening Exercise Test three times. He had to pass the test to qualify for the Firefighter III position. CR 44, Exhibit X. Wilson was also required to obtain a second doctor's letter that indicated he could work as a Firefighter III without restrictions. His first doctor's letter did not say this or comply with the February 22, 1990 letter. CR 44, Exhibit X and Y. After fulfilling these requirements, Wilson attended orientation on May 23, 1990. On May 22, 1990, Chief Langston wrote a memo to "All Personnel" to announce the promotion of Baird and Carpenter to two Fire Inspector positions effective June 4, 1990. CR 44, Exhibit N. The selection of these two employees was made on May 18, 1990. CR 44, Exhibit X.

On June 29, 1990, Wilson requested a promotion to Fire Inspector. CR 44, Exhibit O. On July 5, 1990, Chief Langston informed Wilson that he had to compete for a Fire Inspector position as stated in their agreement. CR 44, Exhibit P. To qualify for a Fire Inspector position, an individual must serve two (2) years as a Firefighter II in the Anchorage Fire Department and serve five (5) years with an organized (paid) Fire Department. <u>After</u> these qualifications are met, individuals may test and compete for inspector positions, as provided in collective bargaining agreement, Article 18. A promotional list is compiled after testing. Candidates are ranked in order of qualifications. The first candidates on the list are offered the next available job. The highest ranked candidate from the list who accepts, receives the job. CR 44, Exhibit Q. Candidates are selected off the promotion list through the duration of the list. This promotional list was extended for another year upon the request of the union to comply with Article 18 of the collective bargaining agreement.

From October, 1990 to July 1991, the International Association of Firefighters, Local 1264 (hereinafter the Union) on behalf of Wilson presented two grievances which were denied by the Municipality at both steps of the grievance process. CR 44, Exhibit R and S. Pursuant to the collective bargaining agreement, the Municipality dealt with the union which was representing Wilson. The matter proceeded to arbitration. On December 4, 1991, the arbitrator, T.W. Patch rendered his decision: "I cannot find Mr. Wilson's grievance to be timely when filed on July 23, 1991." CR 44, Exhibit U. Therefore, Wilson was not entitled to any relief. He was not entitled to be placed on the promotional list or receive the position of inspector except in accordance with the above described procedures nor was Wilson given the right to return to his former position.

Wilson filed a complaint in the Superior Court, Third Judicial District, State of Alaska, against the Municipality and the Fire Department alleging violations of AS 18.80.210 and AS 18.80.220, a breach of the Collective Bargaining Agreement, and race discrimination. CR 1-17. Wilson later amended his complaint adding the Union and the law firm of Jermain, Dunnagan & Owens as defendants, and alleging a violation of the Fourteenth Amendment of the U.S. Constitution. *See* Petitioner's Appendix, G1-24. Wilson later identified a claim for violation of 42 U.S.C. § 1983 (although this was not specifically stated in the complaint).

The Anchorage Fire Department removed the matter to U.S. District Court, District of Alaska. CR 1-1. Subject matter existed over Wilson's original claims under 42 U.S.C. § 1983. The court exercised pendant jurisdiction over the related non-federal claims. The federal question established removal jurisdiction pursuant to 28 U.S.C. § 1442. All parties moved for summary judgment on all issues. CR 19, 44, 53. On January 31, 1993, the U.S. District Court, District of Alaska rendered summary judgment in favor of all the defendants and denied Wilson's motion for summary judgment. *See* Petitioner's Appendix, D1-16. The court dismissed Wilson's 42 U.S.C. § 1983 claim with prejudice, stating:

> In the instant case, beyond the bare fact that Wilson is black, there appears to be no support for his claim that the allegedly unfair treatment he received was racially motivated. Neither does Wilson proffer any evidence suggesting that the fire department has historically discriminated against blacks. *See* Petitioner's Appendix at D-11.

Contrary to Petitioner's arguments, the court did not find that "the hiring of another minority evidently negated any claim of racial bias", that Wilson had less rights than a person of another race, or that "the right to a promotion was not of sufficient importance to justify the claim of equal protection." Although Wilson did not present a substantive due process claim, the court found that the property interests implicated in the case did not support a substantive due process claim. *See* Petitioner's Appendix at D-13. The court did not admit by implication that there was a mistake in its decision, as alleged by the Petitioner. There was not a ruling on the merits of the breach of the labor contract agreement and the personnel rules or a violation of AS 18.80.210 and AS 18.80.220. These claims were dismissed without prejudice. *See* Petitioner's Appendix D-14.

On March 17, 1993, Wilson appealed the judgment in favor of the defendants to the U.S. Court of Appeals for the Ninth Circuit. Pursuant to 28 U.S.C. § 1291, the Court of Appeals for the Ninth Circuit exercised its jurisdiction. Wilson did not appeal the issue of whether it was an abuse of discretion for the court to dismiss the state claims without prejudice. The Ninth Circuit found that Wilson did not present any evidence tending to prove a racial discriminatory purpose behind the rehire agreement or offer anything other than conclusory allegations. *See* Petitioner's Appendix at E-5 and 6. The Ninth Circuit affirmed the District Court's decision to enter summary judgment in favor of all defendants on the claim of a civil conspiracy pursuant to 42 U.S.C. § 1983 which Wilson claimed deprived him of his constitutional rights to due process and equal protection. *See* Petitioner's Appendix at E1-6.

ARGUMENT

A. REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The U.S. Supreme Court should deny the Petition for Writ of Certiorari because the Court of Appeals for the Ninth Circuit has not rendered a decision in conflict with a decision of another United States Court of Appeals on the same matter or applicable decisions of this Court. Furthermore, the Court of Appeals for the Ninth Circuit has not departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the lower court.

1. The court did not depart from the accepted and usual course of judicial proceedings.

The Petitioner argues that the presented facts established a conspiracy under 42 U.S.C. § 1983. Petitioner alleges that the Court of Appeals for the Ninth Circuit ignored evidence or the lack of evidence allegedly not presented by the Respondents. There is no indication in the record that the Court of Appeals for the Ninth Circuit ignored any evidence that was presented by the parties. All of the evidence and arguments were fully briefed to the U.S. District Court, District for Alaska and the Court of Appeals for the Ninth Circuit. The opinion of the U.S. Court of Appeals for the Ninth Circuit shows that it reviewed all of the evidence and did not find evidence to support Wilson's claim.

Petitioner also alleges that the court erroneously analyzed the facts that had already been decided by an arbitrator. Petitioner fails to recognize that an arbitration decision and factual findings are not binding in federal courts in civil rights cases. *See McDonald v. City of West Branch, Michigan*, 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed.2d 302 (1984). The court is within its discretion to analyze and weigh the facts as it deems appropriate. Simply because the Petitioner does not like the way the court analyzed the facts presented is not a reason for granting certiorari as set forth in Sup. Ct. R. 10.1, and does not establish that the court departed from the usual course of judicial proceedings.

Petitioner also alleges that the Court of Appeals for the Ninth Circuit did not conduct a de novo review as required by *U.S. et al. v. Washington et al.*, 774 F.2d 1470 (9th Cir. 1985) and *Milgard Tempering, Inc. v. Selas Corp. of America*, 902 F.2d 703 (9th Cir. 1990). The record does not substantiate a claim that the Ninth Circuit did not conduct a de novo review or merely reiterated the opinion of the court below. None of Petitioner's allegations support the claim that the court departed from the usual course of judicial proceedings.

2. The court's decision is not in conflict with applicable Supreme Court or another decision of a Court of Appeals.

a. Class based animus or discriminatory intent.

Petitioner alleges that the Court of Appeals for the Ninth Circuit and U.S. District Court, District of Alaska have imposed a new and special requirement that the Petitioner show black animus before proving a violation of 42 U.S.C. § 1983. Petitioner's interpretation of the law is erroneous.

Petitioner alleges that she used *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1978) to prove her case and that *McDonnell Douglas* does not require a showing of class based animus. *McDonnell Douglas* sets forth the burdens for proving a discriminatory rehire under 42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964). Petitioner did not allege a violation of 42 U.S.C. § 2000e *et seq.* She alleged a conspiracy to deprive Wilson of his equal protection under 42 U.S.C. § 1983. Thus, the *McDonnell Douglas* analysis was not applicable to this case.

Further, the Court has always required a showing of discriminatory intent or purpose or animus to prove a violation of equal protection, 42 U.S.C. § 1981, 42 U.S.C. § 1983, and 42 U.S.C. 2000e *et seq.* In *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 2050, 48 L.Ed.2d 597, 607 (1976), the court stated that purpose or intent to discriminate must be established for a violation of equal protection. "Discriminatory purpose" means

more than intent by volition or intent as awareness of consequences. *See Personnel Administrator of Massachusetts, et al. v. Feeney*, 442 U.S. 256, 279, 99 S.Ct. 2282, 2299, 60 L.Ed.2d 870, 887 (1979). Discriminatory purpose implies that a decision maker selected or reaffirmed a particular course of action, at least in part, "because of", not merely "in spite of", its adverse effects on an identifiable group. *Id.* Purpose or intent to discriminate must also be established for a violation of equal protection under 42 U.S.C. § 1983. *See Mescall et al. v. Burrus et al.*, 603 F.2d 1226 (7th Cir. 1979). Under 42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act of 1964), a plaintiff must also allege that he has been treated less favorably than his peers because of a class based animus and thus, must prove discriminatory animus towards himself. *See Griggs v. Duke Power Company*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1975). Likewise, in 42 U.S.C. § 1981 cases, claims can only survive on a showing of intentional discrimination. *See General Building Contractors Association v. Pennsylvania*, 458 U.S. 375, 102 S.Ct. 3141, 73 L.Ed.2d 835 (1982). The Court has consistently held that class based animus or discriminatory intent or purpose must be shown to establish violations of the equal protection clause and civil rights acts such as Title VII, 42 U.S.C. § 1981, and 42 U.S.C. § 1983. The Court of Appeals for the Ninth Circuit, like other circuits, followed the requirements of proof as set forth by this Court. Thus, the decision of the U.S. Court of Appeals for the Ninth Circuit did not conflict with any decision of another U.S. Court of Appeals, or deviate from the rulings of the U.S. Supreme Court.

b. Fundamental rights

Petitioner alleges that the right to rehire, the right to work, and the rights guaranteed in the collective bargaining agreement and in the personnel rules are fundamental rights, and that the court wrongly ignored these fundamental rights. However, in the trial court, the petitioner never alleged that the right to work is a fundamental right. More importantly, this Court has ruled that the right to public employment is not a fundamental right. *Massachusetts Board of Retirement et al. v. Murgia*, 427 U.S. 307, 313, 96 S.Ct. 2562, 49 L.Ed.2d 520, 521 (1976). Therefore, the Court of Appeals for the Ninth Circuit's decision on the issue of

fundamental rights does not conflict with applicable decisions of this Court.

c. The Court of Appeals for the Ninth Circuit did not require a higher burden of proof to defeat a Motion for Summary Judgment than the United States Supreme Court.

The U.S. Court of Appeals for the Ninth Circuit did not issue a decision that was in conflict with *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). The Petitioner pursued a claim of a conspiracy to violate Wilson's equal protection rights pursuant to 42 U.S.C. § 1983. Petitioner is required to meet the burdens of proof to show a violation of 42 U.S.C. § 1983 and a violation of the equal protection amendment. *See Mescall et al. v. Burrus et al.*, 603 F.2d 1226 (7th Cir. 1979); *See also Hampton v. Hanrahan*, 600 F.2d 600, 621 (7th Cir. 1979). To defeat a motion for summary judgment, Petitioner had to show more than conclusory allegations. *See Meiri v. Dacon*, 759 F.2d 989,998 (2nd Cir. 1985). A plaintiff cannot survive a motion for summary judgment without offering some supporting evidence of a civil rights violation. *Coverdell v. Department of Social and Health Services*, 834 F.2d 758, 769 (9th Cir. 1987).

Simply alleging a violation of a collective bargaining agreement does not show that Wilson has been discriminated against based on his race, or that he has been denied equal protection of the laws. Furthermore, unlike the company in *Adickes, supra.*, the Respondents rebutted all the conclusory allegations made by Wilson. The court applied the standard set forth in *Adickes*. Therefore, the U.S. District Court for the District of Alaska and the U.S. Court of Appeals for the Ninth Circuit did not give a higher standing to Ninth Circuit cases. The court did not require a higher level of proof to defeat a motion for summary judgment than in other decisions of the United States Supreme Court.

d. The court's decision is not in conflict with another decision of a Court of Appeals on the determination of what questions are in the province of the jury.

Petitioner alleges that the Court of Appeals for the Ninth Circuit's decision is inconsistent with the Seventh Circuit's decision in *Hampton v. Hanrahan*, 600 F.2d 600, 620 (7th Cir. 1979) because the Seventh Circuit stated that the existence or non-existence of a conspiracy is the essential factual issue that a jury, not the trial judge, should decide. In 42 U.S.C. § 1983 conspiracy cases, a plaintiff must allege and establish not only a conspiracy but also an actual deprivation of rights. *Dixon v. City of Lawton, Oklahoma*, 898 F.2d 1443, 1449 (10th Cir. 1990). *See also Hampton v. Hanrahan, supra.*, at 624. If an individual cannot show deprivation of a constitutional right, then the individual cannot establish a conspiracy to deprive him of that right under 42 U.S.C. § 1983. *Dooley v. Reiss*, 736 F.2d 1392, 1395 (9th Cir. 1984). A deprivation of rights could not be shown because Wilson could not establish a discriminatory purpose. It was within the court's authority to determine as a matter of law whether or not a deprivation of rights had occurred. The court did not rule on a factual question that is within the province of a jury. Thus, the court's decision to rule on the conspiracy issue did not conflict with another decision of a Court of Appeals.

3. There are not any important federal law questions presented that haven't already been decided by this Court.

Petitioner attempts to create an issue that has never been raised before in civil rights litigation to persuade this court to grant review. Contrary to Petitioner's assertions, the Court of Appeals for the Ninth Circuit did not decide that "a minority can be justly denied his constitutional rights by the substitution of another minority to that right." The court did not hold that a black American's rights are less important than a native American or another minority, or that another minority can be substituted in a job for a black American. Rather, in its opinion, the court referred to the Respondents hiring of minorities as Fire Inspectors when discussing the Respondents' past hiring practice. The court mentioned this fact while describing that Wilson could not show that he had been discriminated against based on race, or that the Respondents had historically discriminated based on race. In so doing, the Court clearly did not hold that minority substitutions are a justifiable constitutional violation. Thus, Petitioner's issue

of an important question of federal law which has not been settled by this court, does not exist. *See* Petitioner's Appendix at E1-6. Therefore, the Petition for Writ of Certiorari should not be granted.

4. Attorney's fees issues.

Wilson appears to be attempting to appeal the award of attorney's fees to the Respondents to the United States Supreme Court. There is no such right of appeal to this Court. The Court of Appeals for the Ninth Circuit was within its discretion to decide whether or not the Respondents may recover their partial attorney's fees because the appeal was frivolous. The Petitioner alleges that the attorney of record for the Petitioner was sanctioned for helping a civil rights litigant and that it was the court's intent to stifle civil rights litigation. The Petitioner is not in a position to speculate as to the court's intent in awarding attorney's fees.

There are not any reasons pursuant to Sup. Ct. R. 10.1 that would justify granting a review of this matter. Therefore, Respondents respectfully respect that the court deny this Petition for review.

B. THE COURT OF APPEALS FOR THE NINTH CIRCUIT CORRECTLY AFFIRMED THE DECISION OF THE UNITED STATES DISTRICT COURT, DISTRICT FOR ALASKA.

In compliance with Sup. Ct. R. 15.1, Respondents point to any perceived misstatements of facts alleged by the Petitioner that address the merits of the case.

First, the Petitioner erroneously asserts that no reasons were given for rehiring Wilson as a Firefighter III, for requiring him to compete for an inspector position, for extending the list to a two year list, and for leaving his name off this list. The reasons for these actions were fully briefed to the District Court, District for Alaska and the Court of Appeals for the Ninth Circuit.

Second, the Petitioner wrongfully asserts that the Respondents made false statements which confused the court. The

Petitioner continues to mischaracterize the Respondent's arguments to the District Court and to the Court of Appeals for the Ninth Circuit. Petitioner is referring to a footnote in the Respondent's Motion for Summary Judgment presented to the U.S. District Court. It was clear to the U.S. Court of Appeals for the Ninth Circuit and to the District Court what arguments were presented, and the Respondent's did not allege that Wilson was in the Fire Suppression section. Therefore, the District Court and the Court of Appeals cannot be confused about the organization of the Fire Department or the job held by Wilson.

Third, the Petitioner alleges the collective bargaining agreement procedures on union representation were changed because of Wilson's previous actions. The record is devoid of such evidence.

Fourth, the Petitioner wrongfully suggests that Wilson's death was caused by his employment with the Anchorage Fire Department. Wilson voluntarily returned to the department and provided medical documentation that he could work as a Firefighter III without restrictions. His heart attack did not occur on the job.

In summary, in entering its Judgment as a matter of law against Wilson, the court considered the fact that at his deposition Wilson could not identify anything in particular that indicated discrimination, and only Wilson made conclusory allegations to support his claim. The court also considered the fact that Wilson was given the opportunity many times to take the standard physical ability screening exercise test until he passed. Furthermore, the court considered that Wilson did not have any evidence that the Respondents historically discriminated against minorities. In fact, a minority had been hired in one of the available Fire Inspector positions. This evidence was presented in an affidavit to the U.S. District Court and the Court weighed this evidence in ruling against Wilson.

On January 11, 1994, this case was submitted to the Court of Appeals for the Ninth Circuit without oral argument. On February 11, 1994, the court issued its decision. In its decision the court accurately set forth all of Wilson's claims and the

standard that Wilson needed to meet to survive a motion for summary judgment in a civil rights action. Wilson simply had no evidence to support his claim of a conspiracy to deprive him of equal protection of the laws under 42 U.S.C. § 1983 and no evidence to defeat Respondent's Motion for Summary Judgment. The court properly affirmed the decision of the United States District Court, District for Alaska upon finding that there was simply no evidence to support these claims.

CONCLUSION

The Court of Appeals for the Ninth Circuit correctly affirmed the decision of the United States District Court, District of Alaska to grant summary judgment on the claim of a conspiracy pursuant to 42 U.S.C. § 1983 to deprive Wilson of his constitutional rights to due process and equal protection. Wilson could not present any evidence with the exception of conclusory allegations to support his claim. The Respondents rebutted all of these allegations.

More importantly, the Ninth Circuit's decision does not conflict with a decision of another United States Court of Appeals on the same matter or applicable decisions of this Court. The Court of Appeals for the Ninth Circuit did not depart from the accepted and usual course of judicial proceedings or sanctioned such a departure by the lower court. Therefore, no reason exists under Sup. Ct. R. 10.1 to grant this Petition for Writ of Certiorari. Respondents respectfully request that the Court deny this Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit.

DATED this 26th day of July, 1994, at Anchorage, Alaska.

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Municipal Attorney

By: Leslie K Schumacher
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